

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 161 OF 2006

1. Shri Damaji Vaidya,
2. Shri Arun Rahate

....Applicants.

V/s

The State of Maharashtra

....Respondent.

Mr. C.K. Pendse for applicants.

Mr. Y.S. Shinde, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 8th February, 2006

P.C.:

1. Heard the learned Counsel for the applicants and
the learned APP for the State.

2. This is an application for anticipatory bail. The applicants have an apprehension that they are likely to be arrested in connection with C.R. No.90 of 2005 which is registered at Dapoli Police Station for the offence punishable under sections 427, 379 read with section 34 of the Indian Penal Code. In the complaint, it is alleged that the applicants had committed an offence of theft by stealing iron pipes which were lying in the property which was allegedly in possession of the respondent and that the applicants, therefore, had committed an offence of

theft and of mischief.

3. The learned Counsel for the applicants submitted that the applicant No.1, admittedly, is an owner of the plot of land bearing Survey No.53 Hissa No.6 admeasuring 6.05 Gunthas. The applicant No.2 is a dealer of scrap material. He submitted that by an agreement of sale dated 3/12/2005, the applicant No.2 purchased 37 rusted iron pipes from applicant No.1 which were lying in his property. The learned Counsel submitted that, initially, the applicant No.1 who is the owner of the said land, entered into an agreement for lease dated 24/7/1998 for a period of five years with M/s. Enron India Pvt. Ltd. After the agreement was executed, M/s Enron India Pvt. Ltd. carried on various activities in the said land. After the expiry of period of five years, M/s Enron India Pvt. Ltd. had an option either to renew the said lease or to handover the possession of the property to applicant No.1. The company had an option of abandoning any of their property on the said land. It is submitted that no renewal notice was issued by the Government and the lease came to an end on 24/7/2003. The Company also started closing down its business in India. The Court Receiver had been appointed in respect of the properties of M/s Enron India Pvt. Ltd and even the

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Court Receiver did not take any steps for renewing the said lease. The applicant No.1 wrote several letters to the Court Receiver requesting him to handover the property to the applicants since the applicant No.1 was the owner of the property. The Court Receiver wrote a letter to the applicants dated 3/10/2003 that the office of the Court Receiver was not concerned with the said property. In view of the reply given by the Court Receiver, the applicant No.1 sold 37 rusted iron pipes for sum of Rs 5 lakhs to applicant No.2. under an agreement for sale which was duly registered. The applicant No.1 also informed P.I. Naukudkar disclosing about his intention to dispose of the said 37 pipes. He also asked the Inspector to give police protection. The applicants had also filed a civil suit against P.I. Naukudkar restraining him from creating any disturbance. It is the contention of the applicants that the present complaint had been filed with an ulterior object of harassing the applicants.

4. I have heard the Counsel for both the parties are length. I have given my anxious consideration to the submissions made by the learned Counsel for both the parties. In my view, this is a fit case for grant of an anticipatory bail. The facts and material placed on record clearly disclose that the land in question

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from which the iron pipes were sold belonged to applicant No.1. The Court Receiver Office also had stated that it did not have any interest in the said property. M/s Enron India Pvt. Ltd. also had closed down its activities in India and lease period was over and the lease was not renewed. In the lease agreement there is a specific clause which authorizes the applicant No.1. to sell the property which is abandoned on his land after the expiry of the lease. In view of this material, applicants have made out a case for the grant of an anticipatory bail.

5. In the result the following order is passed.

O R D E R

. The applicants are released on bail in the event of their arrest, in the sum of Rs 5000/- each with one or two sureties in the like amount, in connection with an offence which is registered by Dapoli Police Station vide C.R. No. 90/2005 under Sections 427, 379 read with Section 34 of the IPC. The applicants to co-operate to the police during the investigation for a period of one week commencing from 13th February, 2006 between 11 a.m. to 5 p.m. and thereafter, as and when they are called for interrogation during the

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reasonable hours i.e. from 11 a.m. to 5 p.m. till
the filing of the charge-sheet and thereafter, once in
a month till the disposal of the case.

. Application is disposed of.

V.M. KANADE, J.